

USDC SCAN INDEX SHEET



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3:98-CR-00519 USA V. BOGART

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CROBJ.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *J. W. Brannigan*
DEPUTY

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6 Attorney for Plaintiff

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) Criminal Case No. 98cr0519JM
Plaintiff,)
10 v.) DATE: December 18, 1998
11) TIME: 8:30 a.m.
12 RUSSELL J. CONTE,) GOVERNMENT'S OBJECTIONS TO
13 Defendant.) PRESENTENCE REPORT
14 _____)

15 The United States of America hereby submits the following
16 objection to the Presentence Report:

17 DEFENDANT'S CRIMINAL HISTORY

18 On pages 6-8 of the Presentence Report, the Probation Officer has
19 computed defendant Conte's criminal history, arriving at a criminal
20 history score of 5 and Criminal History Category III. The correct
21 criminal history score should be 6, which, although also resulting in
22 a Criminal History Category III, is at the top of that category.

23 In computing the criminal history score, the officer correctly
24 counted Conte's Utah conviction for attempted forgery on May 13, 1992,
25 as 1 point, and Conte's conviction in the District of Utah for false

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1 statement to a financial institution, use of a false Social Security
2 number and attempt to defeat and evade tax, on July 14, 1992, as 2
3 points.

4 Conte committed the instant offense while on supervised release
5 from the District of Utah case and probation in the Utah state case,
6 and was correctly awarded 2 criminal history points in that regard.

7 In the District of Utah case, Conte was originally sentenced on
8 July 14, 1992, to the custody of the Bureau of Prisons for 10 months,
9 to be satisfied by 3 months custody in a jail-type facility and 3
10 months home confinement, followed by 3 years supervised release. That
11 sentence was modified on August 10, 1992, to 6 months custody, to be
12 satisfied by 3 months in a jail-type facility and 3 months home
13 confinement. There is also a a partially unintelligible handwritten
14 interlineation on the certified copy of the August 10, 1992, amended
15 judgment which appears to say "6 mos. now and [arrow symbol] CTC".
16 That note does not appear to be part of the judgment. The August 10
17 judgment has a self-surrender date of August 14, 1992, and Conte went
18 into custody on that date. On September 28, 1992, Conte made a motion
19 to modify the sentence due to his mental condition. The motion was
20 granted without objection by the government, and Conte was released
21 from prison custody on that date. The second amended judgment, filed
22 October 2, 1992, provided that Conte was sentenced to serve 6 months
23 in the custody of the Bureau of Prisons, to be satisfied by serving
24 6 weeks in a jail-type facility, 6 weeks in a half-way house, and 3
25 months home confinement. Bureau of Prison records (See Exhibit A
26 attached hereto.) show that Conte received his full term release from
27 the Bureau of Prisons on November 12, 1992.

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1 Conte committed the instant offense on April 14, 1993. Based
2 upon the above history, Conte committed the instant offense well
3 within two years of his release from custody. He therefore should be
4 awarded an additional criminal history point under USSG § 4A1.1(e),
5 resulting in a total criminal history score of 6.

6 CONCLUSION

7 Defendant Conte's criminal history score should be 6 criminal
8 history points, resulting in Criminal History Category III.

9 DATED: 11/25/98.

10 Respectfully submitted,

11 CHARLES G. La BELLA
12 United States Attorney

13 By: James W. Brannigan
14 JAMES W. BRANNIGAN, JR.
15 Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 98cr0519JM
Plaintiff,)
v.) CERTIFICATE OF SERVICE
RUSSELL J. CONTE,) BY MAIL
Defendant.)

IT IS HEREBY CERTIFIED that:

I, Helaine Curtis, am a citizen of the United States over the age of 18 years and a resident of San Diego County, California; my business address is 880 Front Street, San Diego, California 92101-8893; I am not a party to the above-entitled action; and subsequent to filing with the Clerk of the Court, I will cause to be deposited in the United States mail at San Diego, California, in an envelope bearing the requisite postage, a copy of **GOVERNMENT'S OBJECTIONS TO PRESENTENCE REPORT** addressed to John A. Mitchell, Esq., 2320 Fifth Ave., Ste. 310, San Diego, CA 92101-1633, the last known address, at which place there is delivery service of mail from the United States Postal Service.

21 I declare under penalty of perjury that the foregoing is true
22 and correct.

23 Executed on the 25th day of November, 1998.

Helaine Curtis
Helaine Curtis